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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-20405

NOE GARZA,

Hon. Matthew F. Leitman

Defendant.

/

SENTENCING HEARING

BEFORE THE HONORABLE MATTHEW F. LEITMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Monday, March 27, 2023

APPEARANCES:

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1 Detroit, Michigan

2 Monday, March 27, 2023

3 at about 12:05 p.m.

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5 (Court, Counsel and Defendant present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Matthew F. Leitman, United States District Judge, presiding.

10 You may be seated.

11 The Court calls Case No. 21-20405, United States of
12 America v. Noe Garza.

13 Counsel, please state your appearances for the
14 record.

15 MR. DePORRE: Good afternoon, Your Honor.
16 Jules DePorre on behalf of the United States.

17 THE COURT: Good afternoon. Welcome.

18 MR. LONGSTREET: Good afternoon. Attorney Charles
19 Oliver Longstreet, II, on behalf of Noe Garza.

20 THE COURT: Good afternoon. I see, Mr. Garza, you
21 are with us as well. Good afternoon to you.

22 THE DEFENDANT: Good afternoon, Your Honor.

23 THE COURT: We are here for sentencing following
24 Mr. Garza's conviction on three counts at trial.

25 Mr. Longstreet, let me start with you. Are you and

1 Mr. Garza ready to proceed with sentencing?

2 MR. LONGSTREET: The defense is prepared to
3 proceed.

4 THE COURT: Mr. Longstreet, have you and Mr. Garza
5 had a sufficient opportunity to review the presentence
6 investigation report prepared by the probation department in
7 this case?

8 MR. LONGSTREET: I have thoroughly gone over the
9 presentence investigation report. I filed proper objections.
10 However, I did not have the opportunity to go over the
11 presentence investigation report with Mr. Garza.

12 THE COURT: I lost you there.

13 MR. LONGSTREET: I was speaking really fast.

14 THE COURT: Can you slow down?

15 MR. LONGSTREET: I can. I have thoroughly gone
16 over the presentence investigation report. I have filed all
17 the proper objections. However, I have not had the
18 opportunity to thoroughly go over the presentence
19 investigation report with Mr. Garza.

20 THE COURT: Okay. Then we probably can't go ahead
21 today if you haven't had the opportunity to review the report
22 with Mr. Garza. Do you want to review it with Mr. Garza in
23 the lockup?

24 MR. LONGSTREET: If he would like that.

25 THE COURT: Mr. Garza, what are your thoughts?

1 THE DEFENDANT: I would very much like that.

2 THE COURT: Now, the other -- Mr. Garza, you don't
3 have to accomplish this today. I want to make sure you guys
4 have enough opportunity to review it together. Do you want
5 to see if you have enough time in the lockup and then let me
6 know? Or what do you guys want to do? Or just adjourn this?

7 MR. LONGSTREET: I don't have anything to do until
8 7:00 p.m.

9 THE COURT: Mr. Garza, what are your thoughts?

10 THE DEFENDANT: I think we could review it before
11 we proceed today.

12 THE COURT: Mr. DePorre, are you okay with that?

13 MR. DePORRE: I think so, Your Honor. I didn't
14 want to pull out my cellphone but if I could just check?

15 THE COURT: Sure. I promise not to have you
16 detained for the next 15 seconds.

17 MR. DePORRE: It's Judge Lawson I'm actually
18 looking over at and nervous about. That sounds find, I'm
19 available the rest of the day.

20 THE COURT: Okay. Why don't we -- I have reviewed
21 this presentence report this morning, it's not that long.
22 Why don't we tentatively plan to come back in an hour. I
23 should ask the marshals, does that work for you guys?

24 UNIDENTIFIED MARSHAL: Your Honor, I do know the
25 two of us have a 2:00 hearing just down the hall. I can

1 check and see if maybe after that 2:00 is done we could bring
2 him back up.

3 THE COURT: What's the 2:00, do you know?

4 UNIDENTIFIED MARSHAL: It is a Judge Michelson
5 matter, a sentencing on another hearing over there.

6 THE COURT: Okay. Well, let's do this, let's
7 tentatively plan on coming back at 2:30, and I will ask
8 Michelson what's going on, and we will communicate with you
9 guys. That will give you guys -- by you guys I mean
10 Mr. Longstreet and Mr. Garza -- about an hour and 15 minutes
11 to go over things. When we come back you will let me know if
12 that was not enough, and if it's not enough we'll adjourn it.

13 I want to make crystal clear nobody is being rushed
14 into sentencing today, and we will only go ahead if
15 Mr. Longstreet and Mr. Garza both independently conclude that
16 they have had enough time to review the presentence report.

17 (An off-the-record discussion was held at
18 1:10 p.m.)

19 THE COURT: Why don't we tentatively plan on 3:00
20 because Judge Michelson's 2:00 is a change-of-plea hearing,
21 and we are short on deputy marshals.

22 MR. LONGSTREET: 3:00 is fine with the defense.

23 MR. DePORRE: Thank you, Your Honor.

24 THE COURT: Does that still work for you,
25 Mr. DePorre?

1 MR. DePORRE: Yes, it does.

2 THE COURT: I'm going to run back, call
3 Judge Lawson and have you arrested. Other than that, I will
4 see you at 3:00.

5 THE CASE MANAGER: All rise. Court is in recess.

6 (At 1:11 p.m. court recessed.)

7 — — —

8 (Court reconvened at 3:10 p.m.; Court, Counsel and
9 Defendant present.)

10 THE CASE MANAGER: All rise. Court is in session.

11 THE COURT: Please be seated.

12 It is about 3:10. We have been on a break just shy
13 of two hours.

14 Mr. Longstreet, before we took the break, the idea
15 was for you and Mr. Garza to have an opportunity to review
16 the presentence investigation report. Have you guys now had
17 a sufficient opportunity to do that?

18 MR. LONGSTREET: I believe we have.

19 THE COURT: Mr. Garza, do you agree?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Garza, do you want to proceed with
22 the sentencing today?

23 THE DEFENDANT: I would like to, yes.

24 THE COURT: Okay. All right. Then we will do
25 that.

1 So, Mr. Longstreet, you have indicated that you and
2 Mr. Garza had a sufficient opportunity to review the report.
3 I see in the draft of the report that I have that you have
4 raised one objection, and I will take that up in a minute.
5 Other than the one listed in the report, do you have any
6 corrections or objections that you care to make?

7 MR. LONGSTREET: There should have been more than
8 one objection because I objected to everything involving the
9 arrest in Burton at the hotel which included multiple
10 paragraphs. However, there are additional objections. The
11 defense respectfully objects to line 13 --

12 THE COURT: Let's -- why don't we just go through
13 one at a time. I can tell you the report that I have
14 indicates that the only objection is to page 8, paragraph 29.
15 But I'm willing to go slow and go through whatever else you
16 want to talk about. Why don't we just go through in
17 chronological order in the report and start with the
18 beginning and you tell me everything that you object to.

19 MR. LONGSTREET: Starting at page 5, line 13, this
20 involves an arrest that was not litigated at the trial. This
21 is another incident in which the defense believes that there
22 was --

23 MR. DePORRE: Your Honor, I apologize for
24 interrupting Mr. Longstreet. Mr. Longstreet had filed
25 objections to a preliminary report. The government concurred

1 in a number of those objections. There was a revised report
2 that was sent out. I believe that the paragraph 13 that he's
3 quoting from is the original preliminary report and not the
4 revised report. The revised date of the report --

5 THE COURT: I have a revised date of February 24th,
6 2023.

7 MR. DePORRE: Correct, Your Honor.

8 THE COURT: Do you have that one, Mr. Longstreet?

9 MR. LONGSTREET: I don't have the new copy. I only
10 have the first one which I made objections to, but I presume
11 that based on the new report my objections were sustained as
12 the government agreed and they from removed from the report.

13 MR. DePORRE: I have an extra copy, if I could pass
14 it to Mr. Longstreet?

15 THE COURT: You have an extra copy of the --

16 MR. DePORRE: Of the revised PSR.

17 THE COURT: Do you happen to have a copy of the
18 original one as well?

19 MR. DePORRE: That would be a lot to ask; no, I
20 don't.

21 THE COURT: Okay. So, Mr. Longstreet, here's my
22 understanding, and I'm certainly not in a position to
23 independently vouch for this, but my understanding is that in
24 the revised report, which is what I have, listed one
25 objection. So what I would assume is that that is the only

1 outstanding objection that wasn't resolved in your favor.
2 But just if you want to be safe, I don't mind going through
3 everything that you objected to just to make sure it is not
4 in here.

5 MR. LONGSTREET: Your Honor, I believe the revised
6 copy doesn't have these particular items in there. I'm okay
7 with them but there are additional --

8 THE COURT: Can you pull the microphone a little
9 closer?

10 MR. LONGSTREET: Sure. There are additional
11 objections that Mr. Garza wishes to make --

12 THE COURT: Okay.

13 MR. LONGSTREET: --including line 12 as one of the
14 firearms listed in this was involved in the Burton incident
15 and should not be in this report.

16 THE COURT: Okay. Can you give me a paragraph
17 number?

18 MR. LONGSTREET: Paragraph 29, page 8.

19 THE COURT: On page 8 I don't have paragraph 29.
20 Paragraph 29 in mine refers to "adjustment for obstruction of
21 justice, none." I don't know what paragraph you are --

22 MR. LONGSTREET: Can I see your updated report?

23 THE COURT: Just so our record is clear, the report
24 that I'm referring to -- what I'm talking about what is in
25 front of me is Docket No. 54.

1 MR. LONGSTREET: Very well. I will be referring to
2 the new report, which will make it paragraph -- page 7,
3 line 26. It mentions the Smith & Wesson .38 special, and
4 that Smith & Wesson .38 special was involved in the Burton
5 incident. That's not an issue that was litigated in this
6 case and thus I believe it would be improper also. The
7 defense believes that the firearm was found based on a
8 violation of the Fourth Amendment he does not have the right
9 to give the police a proper -- police permission to enter
10 into a hotel room. I believe the government agreed,
11 dismissed those charges, and did not move forward with that.
12 So I believe that particular mention of the Smith & Wesson
13 .38 special should not be a part of this report.

14 THE COURT: Mr. DePorre.

15 MR. DePORRE: No objection, Your Honor.

16 THE COURT: All right. So how would you have --
17 you would eliminate the words "and a Smith & Wesson .38
18 special caliber revolver, model 442, serial number BPM7760"
19 from the report?

20 MR. LONGSTREET: That's correct.

21 THE COURT: So I will delete the words starting in
22 this paragraph 26 starting with "and" and ending in
23 "BPM7760." So paragraph 26 now reads, "As a firearm (a Ruger
24 EC9 pistol with an obliterated serial number), was possessed
25 in connection with another felony offense (drug trafficking),

1 four levels are added." And then there is a cite to
2 USSG §2K2.1(b) (6) (B). That's how it reads now.

3 MR. LONGSTREET: The defense again objects. I
4 don't believe -- I believe he was charged with possession
5 with intent to deliver -- excuse me, never mind. We still
6 object to the Ruger being mentioned as we didn't believe that
7 should be counted either, but I believe it is being counted
8 twice in paragraph 25 and 26.

9 THE COURT: I just want to make sure I understand
10 the objection. You are suggesting here -- or the basis of
11 your objection is that the four points in paragraph 25 are
12 effectively duplicative of the four points in 26?

13 MR. LONGSTREET: That's correct.

14 THE COURT: Let me think out loud with you and get
15 your reaction. My understanding is that the four points that
16 are assessed in paragraph 25 are for the partially
17 obliterated serial number, and that the four points in
18 paragraph 26 are for the possession in connection with
19 another felony offense, and while paragraph 26 references the
20 obliterated serial number, my understanding is that the
21 assessment of four points in paragraph 26 doesn't turn on the
22 obliteration of the serial number whereas the assessment of
23 the four points in 25 does.

24 MR. LONGSTREET: Which would go to the possession
25 with intent to deliver Suboxone.

1 THE COURT: Was that a question or statement?

2 MR. LONGSTREET: A question.

3 THE COURT: I'm assuming that the drug trafficking
4 offense in paragraph 26 is the -- I'm sorry, the reference to
5 another felony offense in paragraph 26 is to the possession
6 with intent to distribute the Suboxone.

7 MR. LONGSTREET: There is no legal objection I can
8 make.

9 THE COURT: Okay. Do you then have any other
10 objection you want to make with respect to 25 or 26?

11 MR. LONGSTREET: No.

12 THE COURT: Just so our record is clear, are you
13 saying that you no longer have a basis to object to the four
14 points assessed in 25 and the four points assessed in 26?

15 MR. LONGSTREET: No legal objection, no.

16 THE COURT: So you are agreeing with me?

17 MR. LONGSTREET: I am.

18 THE COURT: Okay. Thank you. What next,
19 Mr. Longstreet?

20 MR. LONGSTREET: Defendant objects to line 91 as he
21 believes he has not been --

22 THE COURT: Hold on. Let me catch up. So
23 Paragraph 91 refers to federal benefits.

24 MR. LONGSTREET: That's correct. He believes he
25 has not been previously convicted of three prior drug

1 offenses.

2 THE COURT: Mr. DePorre, do you have any --

3 MR. DePORRE: If I could just have a moment, Your
4 Honor?

5 MR. LONGSTREET: There's two listed in the report,
6 not three.

7 PROBATION OFFICER: Your Honor, Cody Bellamy on
8 behalf of the Probation Department.

9 For clarity, paragraph 91 reads under Count 3, "The
10 defendant, having been convicted of a third or subsequent
11 drug distribution offense..." That references he has two
12 prior drug distribution offenses, and this offense being his
13 third.

14 THE COURT: And so --

15 MR. LONGSTREET: You've got two.

16 THE COURT: -- the two priors would be, if I'm
17 reading this correctly, is it --

18 PROBATION OFFICER: The Seventh Circuit Court,
19 Docket No. 15 --

20 THE COURT: Which paragraph are you referring to?

21 MR. DePORRE: Judge, if I may? Jules DePorre.

22 THE COURT: Go ahead.

23 MR. DePORRE: Paragraph 39 contains two delivery
24 convictions; one for delivery, manufacture of Vicodin, and
25 the other for delivery/manufacture of morphine. They were in

1 one case but for I think the federal benefits -- so under
2 the sentencing guidelines they would be counted as one
3 conviction -- or one sentence for calculation of the
4 guideline range, but for calculation of federal benefits
5 eligibility I really don't know how those are counted but I
6 do know those are two separate counts he has been convicted
7 of, two separate delivery counts.

8 THE COURT: Is this something that goes into the
9 judgment that I check?

10 MR. DePORRE: Not that I'm aware of.

11 THE CASE MANAGER: You can, but we usually do not.

12 THE COURT: I assume whether I check it or not
13 isn't determinative of this point; is that correct?

14 PROBATION OFFICER: Yes, Your Honor. You do have
15 the ability to order that the defendant now become
16 permanently ineligible of all federal benefits but that would
17 be totally left to the discretion of the Court.

18 THE COURT: All right. Well, with respect to your
19 objection, Mr. Longstreet, do you want to add in at the end
20 of paragraph 91, defendant disputes that he's been convicted
21 of a third or subsequent drug distribution offense.

22 MR. LONGSTREET: Yes.

23 THE COURT: Does that satisfy you?

24 MR. LONGSTREET: It does.

25 THE COURT: Mr. DePorre, does that satisfy you?

1 MR. DePORRE: It does, Your Honor.

2 THE COURT: I do not intend to include in my
3 judgment some sort of disqualifying language permanently
4 disqualifying him from federal benefits.

5 Mr. Longstreet, what's next?

6 MR. LONGSTREET: Mr. Garza objects to paragraph --
7 is that all the objections?

8 THE DEFENDANT: Yes.

9 MR. LONGSTREET: Is that all of them?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Garza, do you have any additional
12 objections?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: All right. Mr. Longstreet, the one
15 that is in my report that I want to make sure we don't miss
16 is -- I guess we covered it, but it is paragraph 29 of the
17 four points for obliterated serial number.

18 Mr. DePorre, do you have any objections to the
19 presentence report?

20 MR. DePORRE: No, Your Honor.

21 THE COURT: Mr. Longstreet, the Probation
22 Department has calculated the guideline range as 140 to
23 175 months. I know you are asking for a much lower sentence
24 than that, but do you agree as a purely technical matter
25 given how I have resolved your objections to the guidelines

1 that that is an accurate calculation?

2 MR. LONGSTREET: Yes.

3 THE COURT: Mr. DePorre, do you concur in that
4 calculation?

5 MR. DePORRE: Yes, Your Honor.

6 THE COURT: Okay. Then I will adopt the
7 presentence investigation report as written with the one
8 change -- or two changes that I discussed here with
9 Mr. Longstreet on the record. I will find that the facts set
10 forth in the presentence report are true including those that
11 were used to facilitate the calculation of the guidelines
12 range. I will find that the correct guidelines calculation
13 is a total offense level 28, criminal history category VI,
14 for a guideline range of 140 to 175 months.

15 I have received and reviewed sentencing memos from
16 both counsel. Thank you very much for those.

17 What I would propose to do now is to hear first
18 from Mr. Longstreet, then from Mr. Garza if he wishes to
19 speak to me, and then from Mr. DePorre.

20 Mr. Longstreet, do you mind coming to the podium?

21 MR. LONGSTREET: Sure. Your Honor, we are here
22 today for a sentencing on possession of -- possession of a
23 firearm by a felon, possession with intent to deliver
24 Suboxone, which is a drug used to treat heroin addiction, and
25 possession of a firearm with an obliterated serial number.

1 Although my client was convicted by a jury, we
2 still find rather questionable the facts in the case without
3 diminishing my client's acceptance of responsibility. We
4 have three people in a car with a gun underneath the hood of
5 a car. There is no actual possession. The allegation here
6 is constructive possession with no criminality attached. My
7 client was not a danger to the public at the time he
8 allegedly possessed this firearm. This firearm was only
9 discovered after it was pulled to the side, trunk open,
10 battery removed, and then they could get to a firearm which
11 tells me that the firearm was not readily accessible to
12 Mr. Garza at the time. Also, even though the jury found him
13 guilty of possession of a firearm, it is still questionable
14 whether that firearm was his or not. There was no evidence
15 that my client's fingerprints were on the firearm.

16 THE COURT: Mr. Longstreet, let me jump in here for
17 a second. As I think I mentioned to you previously, I
18 thought you did a wonderful job defending Mr. Garza at trial
19 and a wonderful job trying to spotlight for the jury areas
20 where the jurors should have doubt whether this gun was
21 Mr. Garza's.

22 But for purposes of sentencing I want to share my
23 personal view. I have absolutely no doubt, zero, that this
24 gun was Mr. Garza's. I'm a hundred percent confident in the
25 jury's verdict. You did a great job trying to create doubt,

1 nobody could have done more than you, but I'm a
2 hundred percent satisfied this is his gun.

3 MR. LONGSTREET: Very well. If the Court is
4 satisfied this is his firearm, then I take this position:
5 Even if it was -- even if it is his firearm, it wasn't in the
6 possession that he was going to use it. He was no danger to
7 anybody with it. He didn't try to use it against anybody.
8 He didn't possess it at the time. At this point there is
9 really no showing that he did anything other than -- illegal
10 other than have it underneath the hood of a car where it
11 wasn't accessible. He wasn't a danger to the public at the
12 time. He was in a parking lot and was uninvolved with the
13 crime that got him arrested in the first place.

14 THE COURT: Uninvolved other than sending the guys
15 in there to steal for him to pay back a drug debt.

16 MR. LONGSTREET: Well, that's what they said but
17 that's not necessarily what we believe happened. My client
18 took two people to the store to go grocery shopping from what
19 he understood, and they went inside and started stealing. At
20 that point they had all the motive in the world to lie and
21 say we're in here stealing for this guy because one of them
22 was a carjacker and the other one has other issues, both of
23 them were heroin addicts, and they both of them were in there
24 stealing, so they had all the reason in the world to come in
25 here and point the finger to him. So they can come in here

1 and say, yes, it was his firearm or they could say a lot of
2 different things but I don't think their credibility should
3 go that far, and the Court should not -- that the only thing
4 I think the Court should consider at this point is that there
5 was constructive possession of a firearm very far away, not
6 accessible to him, he wasn't a danger to the public at the
7 time, he wasn't doing anything at the time other than sitting
8 in a car, and so to ask somebody to send someone to prison
9 for 10, 15, 14 years for a firearm that is really no danger
10 to anybody at the time he has it we believe is unjust, and
11 because of that we are asking for a five-year sentence.

12 Thank you.

13 THE COURT: Thank you, Mr. Longstreet. I
14 appreciated your thoughts.

15 Mr. Garza, this is your opportunity to speak
16 directly to me. You are not required to say anything, and I
17 certainly won't hold it against you if you don't, but if you
18 would like to say something I would listen carefully. Would
19 you like to speak to me, sir?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Okay. Thank you.

22 Mr. DePorre, your thoughts? Do you mind coming to
23 the podium? And do you mind if I start with a question? You
24 don't have to answer that because I'm just going to do it, so
25 let me start.

1 Mr. Longstreet makes a couple primary points in his
2 sentencing memo, one that he emphasized again today, which
3 was that given the location of the gun relatively speaking
4 the gun didn't pose a threat, that it would take quite an
5 effort by Mr. Garza to get the gun, and that's at least to
6 some extent a mitigating feature of the possession. Do you
7 disagree with that?

8 MR. DePORRE: I don't disagree. I agree that's a
9 mitigating factor. It is not readily accessible. He didn't
10 have it next to him with a round in the chamber ready to use,
11 so I do think that's mitigating. It would take quite some
12 effort to go retrieve that gun.

13 THE COURT: Okay. Next question. This is a bit
14 unusual in that the drug distribution count was for intent --
15 possession with intent to distribute Suboxone, right?

16 MR. DePORRE: Correct.

17 THE COURT: Mr. Longstreet made the point at trial,
18 which seems to me to be a fair one, that's an unusual drug to
19 be distributing in that it is a drug that generally folks are
20 using to get off the really nasty stuff, isn't it?

21 MR. DePORRE: Yes. So Suboxone is primarily used
22 as a -- for opioid use disorder treatment. It can also be
23 used for pain for analgesic effects.

24 THE COURT: I hear a lot about problems we have in
25 the streets with heroin and meth and crack and that stuff. I

1 don't hear a lot about Suboxone. Is it a drug that is --

2 MR. DePORRE: It is frequently abused. It doesn't
3 have the devastating effects that say fentanyl or meth would
4 have, but it is a drug that we see commonly converted from
5 its proper use in a prescribed setting to street use, so it
6 is similar in that regard to, you know, other opiates like
7 OxyContin or Norco.

8 THE COURT: Is it ruining people's lives in the
9 same way these other opioids are?

10 MR. DePORRE: Like Norco?

11 THE COURT: Norco, OxyContin.

12 MR. DePORRE: No, I think those are worse.

13 THE COURT: Okay. Please go ahead.

14 MR. DePORRE: Your Honor, the government did submit
15 a sentencing memorandum in this case. We have asked for a
16 substantial custodial sentence. We believe that's necessary
17 in --

18 THE COURT: What is substantial? Substantial is
19 kind of in the eye of the beholder. If you and I were asked
20 about ten different sentences in ten different cases, we
21 might disagree in every case where the substantial number
22 lies. Do you have a number in mind?

23 MR. DePORRE: I don't. I leave it to the Court's
24 discretion. I think that it needs to be enough to accomplish
25 the factors that are set forth in the statute. And Congress

1 has given -- Congress has given a fairly comprehensive list
2 of factors for the Court to consider, and many courts come
3 out in different ways on this.

4 I would note that looking at the sentencing data
5 that offenders that are convicted of the same guideline
6 provision, a crime that references 2K2.1, and are also
7 criminal history category of VI, and base offense level 28,
8 the average sentence in those cases both in terms of mean
9 average and median is 120 months, so that is a very lengthy
10 sentence without question.

11 And it just -- there is -- based on that -- there
12 aren't a lot of other wild departures from that range when I
13 look at sentencing data, so it does seem like that's where
14 most courts end up.

15 I would say it is important to also recognize that
16 in most instances, as the Court is aware, criminal defendants
17 plead guilty and they don't go to trial, and they accept
18 responsibility that is something that is unique in this case,
19 and it effects I think the sentence in two ways. Number one,
20 Mr. Garza is not entitled to any credit for acceptance of
21 responsibility.

22 But I think at a more fundamental level with
23 respect to the factors that the Court has to consider, it is
24 easy when somebody comes before the Court and says I have
25 learned my lesson, I made a mistake, and I promise to do

1 better. And it is easy to see a deterrent effect already
2 sort of in progress, that the defendant has acknowledged what
3 they have done as being wrongful, and they have made a
4 commitment to try to change their life and to try to take a
5 different approach in the future. That's something that we
6 don't have in this case, and that's what is perhaps most
7 troubling.

8 So for that reason I -- primarily for that reason
9 but also because the defendant has engaged in dangerous
10 crimes both with guns and other assaultive crimes that don't
11 involve guns, he's engaged in drug trafficking and other --
12 you know, his drug trafficking is street-level drug
13 trafficking. He's not, you know, the leader of the cartel.
14 He's not high up -- he's not a high-level target for the U.S.
15 Attorney's Office or a figure like that, but the arrest that
16 he was -- that occurred about a week before the Meijer arrest
17 involved a substantial amount of drugs, and not just Suboxone
18 but methamphetamine, heroin. So the defendant is engaged in
19 significant criminal conduct that needs to be detoured, and
20 unfortunately his prior sentences have not detoured him. And
21 the fact that he hasn't accepted responsibility before this
22 Court shows that there's an added basis for a longer, more
23 substantial sentence to effectuate deterrence and to protect
24 the public.

25 THE COURT: Okay. Thank you. I appreciate those

1 arguments.

2 I want to make clear that -- and I will talk about
3 my sentence in a minute, and I understand and respect those
4 arguments, but I want to make sure that there is no mistake
5 on this record, I'm not in any way going to penalize
6 Mr. Garza for not accepting responsibility or for going to
7 trial or for persisting in his innocence. I understand your
8 argument, but I want to be clear that under no circumstances
9 is any part of my sentence based on the notion that he
10 exercised his right to have a trial or today he's exercising
11 his right to stay silent. I understand folks get a credit
12 when they accept responsibility but in no way am I going to
13 penalize him today for those two things. Okay.

14 MR. DePORRE: Thank you.

15 THE COURT: Mr. Longstreet, I do though have a
16 couple questions that I wanted to ask you.

17 I told Mr. Garza I wasn't going to penalize him for
18 not saying anything today and I'm not going to. But separate
19 and apart from whatever he might say, can you, as his lawyer,
20 point me to any evidence that there is a reason to believe
21 that Mr. Garza will be on a better path going forward? And
22 here in answering this question you can persist in the
23 position that he was innocent here. Even if he was innocent
24 here, what comfort can I have in moving forward that even if
25 this wasn't a crime in the Meijer parking lot there's some

1 reason to think that his life going forward will involve
2 gainful, lawful employment, law-abiding behavior, being a
3 constructive member of the community. Is there any evidence
4 of that?

5 MR. LONGSTREET: I think the best person to answer
6 that is Mr. Garza. Mr. Garza expressed the opinion that he
7 no longer wants to be incarcerated. He's been incarcerated
8 before. He wasn't intending on being incarcerated this time.
9 He was in bad company. He was a part of a -- or he is here
10 basically on a state shoplifting case that got him federal
11 time. I don't think at the time Mr. Garza was trying to get
12 off his heroin. He was using Suboxone to get off that. He
13 was uninvolved in any criminal activity at the time.

14 So I think the case in and of itself shows my
15 client really didn't have any criminal intent on that
16 particular day. Again, this is a state shoplifting case, a
17 very minor offense that turned major real fast because he's a
18 prior felon. This is a local state case that turned federal
19 which increased the time from two years in the state court to
20 ten years or 15 years in the federal court.

21 So the question the Court has presented, is there
22 any evidence that my client is going to do any different when
23 there is no evidence that he's not --

24 THE COURT: Well, again, to make it clear that I'm
25 not insisting that he speak or I'm not penalizing for him not

1 speaking, sometimes counsel can point me to the fact that
2 while incarcerated somebody took some classes, somebody did
3 some mentoring, something that -- anything that I can point
4 to to get some comfort level that their post-incarceration
5 life will be productive, constructive and law-abiding.
6 That's what I'm trying to get at here. You've answered it
7 but I just want to clarify what I was looking for.

8 Here is my next question. One of the topics that
9 each of you address in your sentencing memos are the jail
10 calls that were played during the trial. I found those calls
11 quite disturbing in a couple regards, and I want to make sure
12 I give you an opportunity to respond.

13 The two parts of the calls that concern me the most
14 were the repeated references in here to a willingness to use
15 violence. Mr. Garza repeatedly saying -- I have the
16 transcript -- you know, who he was going to act out violently
17 against.

18 And then the references to what he asked the
19 girlfriend to do -- or friend in order to get the money to
20 get him out on bond, and he twice directed this woman to
21 generate \$500 for him by performing oral sex on men, and he
22 didn't say it as delicately as I did. His exact words, and I
23 want to say it because it was so impactful on me as I was
24 sitting up here. His exact words were, "Suck a dick. I
25 don't give a fuck." was one. And then the other one was,

1 "Get me the fuck out. Ten dicks, suck them for 50 bucks, or
2 fucking five dicks for a hundred bucks, it's \$500."

3 I don't say that for prurient value, but the
4 impression that gave me, Mr. Longstreet, was somebody that
5 does not have a lot of value and respect for fellow people.
6 And certainly when trying to assess risk to the public and
7 law-abiding future and stuff like that, those two sets of
8 comments concern me.

9 Is there anything that you can say beyond this is
10 just braggadocio or tough-guy talk or something?

11 MR. LONGSTREET: I will need permission to release
12 confidences from my client in order to address that question.

13 THE COURT: Okay. Do you want to talk to him or if
14 you can't answer it now that's fine.

15 MR. LONGSTREET: I can't answer without breaching
16 attorney-client privilege.

17 THE COURT: Do you want to talk to him for a
18 minute?

19 MR. LONGSTREET: I do.

20 THE COURT: Go ahead.

21 (An off-the-record discussion was held at
22 3:43 p.m.)

23 MR. LONGSTREET: How I would address that is that
24 my client was in a desperate situation. However, the
25 comments about her performing oral sex acts or performing

1 oral sex acts in order to gain money was something he was not
2 serious about.

3 THE COURT: What about the references to the
4 violence, which were even more concerning?

5 MR. LONGSTREET: In reference to the violence, that
6 I believe was tough-guy fluff. He was incarcerated. There
7 was some alleged attacks on this young woman's life or
8 threats on this young woman's life. To relieve her from what
9 he believed to be stress from that situation he was trying to
10 ensure that she was safe, that the other rival gang members
11 would not do anything to her, that he was supportive of her
12 or had her back. That nothing would -- no danger would come
13 of her. And his whole objective in that conversation was to
14 ensure her that these other gang rival members would not --
15 or try to -- attempt to try to comfort her in that these
16 other rival gang members would not bring her harm.

17 He was not in the position to do anything. He has
18 remained incarcerated since that day so he could not do
19 anything. He knew he could not do anything. And he knew he
20 wasn't going to get out of jail no time soon. With that
21 knowledge, he can talk all -- as they say in the
22 neighborhood, you can talk a lot of stuff but you ain't doing
23 nothing. You can talk a whole lot when you are behind the
24 bars. There was nothing he could do, and he knew there was
25 nothing he could do, so the only thing he can do is try to

1 make her feel comfortable. Yeah, I'm going to beat these
2 guys up knowing that he couldn't crack a twig.

3 THE COURT: Okay. Thank you. Before I get into
4 the sentencing, Ms. Ryan mentioned I need to rule on the oral
5 motion for acquittal that Mr. Longstreet raised.

6 I'm going to deny the motion. Having sat through
7 the trial I'm confident that when all of the evidence in
8 viewed in the light most favorable to the government there
9 was more than sufficient evidence to support the jury's
10 verdicts here.

11 Okay. Mr. Garza, when I impose sentences in my
12 criminal cases I have to consider and apply the factors set
13 forth in the sentencing statute found at Title 18,
14 United States Code, Section 3553(a), and I want to walk
15 through with you how I see those factors applying to you and
16 to this case.

17 Mr. Garza, the first factor I have to consider is
18 the nature and circumstances of the offense, and this is kind
19 of a mixed bag here. Any possession of a firearm by somebody
20 who has been convicted of a felony is a serious matter. Any
21 possession of a firearm in connection with the drug
22 trafficking is a serious matter. So those parts of the
23 offense to me weigh in favor of a more serious sentence.

24 But I think there are two points that
25 Mr. Longstreet has pressed that are mitigating factors here.

1 The nature of this possession, as Mr. Longstreet calls it,
2 constructive possession, where the weapon was located not
3 readily accessible. I think Mr. DePorre candidly
4 acknowledges that is somewhat of a mitigating factor.

5 Weapons are most dangerous when they are readily
6 accessible with a firearm with a round chambered ready to go
7 and that can be used if the situation heats up, and that
8 wasn't the case with you, and I have given that serious
9 consideration.

10 The other point that I think is worth highlighting
11 here is the nature of the controlled substance. It's not to
12 be diminished, Suboxone is a controlled substance for a
13 reason, but I think that -- this was a point that
14 Mr. Longstreet made I think effectively at trial that it's a
15 drug that's primary purpose is to get people off of the
16 really bad stuff. And while it is subject to abuse,
17 Mr. DePorre made that point, he also candidly acknowledged
18 that it is not ripping through the community like Vicodin,
19 OxyContin, fentanyl and those things, so there is a balance
20 here. It's a serious offense, but there are certainly
21 mitigating factors that I have considered.

22 The next factor I have to consider is your personal
23 history and characteristics. I read in the presentence report
24 that during one of your prior incarcerations -- I think it
25 was in that boot camp you earned your GED, and that's

1 certainly a credit to you. I read that your future goal is
2 to go to welding school and develop a plan. This is kind of
3 what I was getting at with Mr. Longstreet, and I really hope
4 that you do that.

5 Mr. Garza, you are still relatively young. I can
6 tell you have a lot of energy, and I think the challenge for
7 you is to focus that energy in a constructive way. So
8 hopefully welding can be your future. And I have certainly
9 and carefully considered that you do have a career goal, and
10 you have been wrestling with your own drug issues over the
11 course of your history, so I have considered that as well.

12 On the negative side, your criminal history is
13 certainly a concern, and I have factored that into the
14 sentencing decision as well.

15 But the next factor I have to consider is the
16 sentence needs to reflect the seriousness of the offense,
17 promote respect for the law, and provide just punishment.
18 Here I do think that a serious sentence is necessary to
19 reflect the overall seriousness of this offense and to
20 promote respect for the law, and to provide a sufficient
21 level of punishment for what happened.

22 The next factor I have to consider is affording
23 adequate deterrence to criminal conduct. And likewise, here
24 I think a meaningful custodial sentence is necessary. You
25 have had several different stints in custody, none for as

1 long as I'm going to impose here, but those haven't been long
2 enough to deter from you committing offenses, and that
3 suggests to me that a longer sentence is necessary to achieve
4 specific deterrence.

5 And likewise here I think a meaningful custodial
6 sentence is necessary to achieve general deterrence to send a
7 message to other folks up in the Flint area that there is a
8 meaning price to be paid for possessing guns and intending to
9 distribute controlled substances.

10 The next factor I have to consider is protecting
11 the public from further crimes by you. And likewise, I think
12 that this factor requires a meaningful custodial sentence.
13 Again, having listened to these audio tapes and looking at
14 those in connection with your criminal history, I do think
15 that a meaningful sentence is necessary to achieve protection
16 of the public here.

17 The next factor I have to consider is providing you
18 with needed educational or vocational training, medical care
19 or other correctional treatment in the most effective manner.
20 I am not adding any time to your sentence to achieve that
21 goal but, Mr. Garza, it is my sincere hope that once you get
22 out of whatever county jail you are in now and you get to the
23 BOP that you really take advantage of all of the educational
24 opportunities and skill-building opportunities that they
25 offer.

1 Your prior terms of custody I think have been
2 exclusively state custody, and from my understanding there is
3 a significant difference between state time and federal time.
4 What I'm referring to here is the opportunity to really
5 develop some skills and improve your knowledge base in the
6 federal system that may not have been available in the state
7 system, and I sincerely hope that you take advantage of that
8 because I think that will help you moving forward to avoid
9 coming back and appearing before somebody like me in another
10 case.

11 I have to consider the kind of sentences available,
12 and I have done that. I could impose statutorily if I ran
13 everything consecutive, I think it is up to 25 years, but I
14 have also carefully considered the guidelines range of 140 to
15 175 months.

16 Finally, I need to avoid unwarranted sentencing
17 disparities among similarly situated defendants. I am going
18 to impose a sentence here that is meaningfully below the
19 guideline range here, but I don't think in doing so I'm going
20 to create a disparity that is unwarranted. I think that the
21 sentence that I impose here is going to be strong enough to
22 send a message but is going to reflect some of the mitigating
23 factors that I mentioned earlier.

24 So ultimately my task is to impose a sentence that
25 is sufficient but not greater than necessary to achieve all

1 of the goals that I have just mentioned. And while
2 Mr. Longstreet has asked for a sentence of 60 months, and I
3 very much respect his advocacy in asking for that, I think
4 that is not sufficient to achieve the goals of sentencing in
5 this case.

6 I think that the appropriate sentence and one that
7 in my own mind that I regard as substantial is a sentence of
8 80 months in custody here. To me that is serious business,
9 it is a long time. You are a young person. It is meant to
10 be serious. I know Mr. Garza that's substantially longer
11 than you were hoping to get today, but I want you to
12 understand that is a substantial variance below the bottom of
13 the guidelines. The guidelines are 140 months, and I imposed
14 a sentence that's five years below the bottom of the
15 guidelines. Again, I did that because while I do think this
16 was a serious offense, I think that the mitigating factors
17 here, how it went down, and the lack of immediate threat both
18 how you possessed the gun and the nature of the controlled
19 substances that you had, makes a sentence of 80 months
20 sufficient but not greater than necessary to achieve the
21 goals of sentencing.

22 So let me formally announce your sentence as
23 follows: Pursuant to the Sentencing Reform Act of 1984, the
24 Court, considering the sentencing guidelines and the factors
25 contained in Title 18, United States Code, Section 3553(a),

1 hereby commits Mr. Garza to the custody of the United States
2 Bureau of Prisons for a term of 80 months custody on Counts 1
3 and 3, and 60 months custody on Count 2, all of which are to
4 run concurrent with one another.

5 Upon release from imprisonment, Mr. Garza shall be
6 placed on supervised release for a term of two years on all
7 counts to run concurrently to each other.

8 It is further ordered that Mr. Garza pay a special
9 assessment of \$100 per count for a total of \$300, which is
10 due immediately.

11 I will waive the imposition of a fine, the cost of
12 incarceration, and the cost of supervision due to Mr. Garza's
13 lack of financial resources.

14 Mandatory drug testing is ordered.

15 Pursuant to Title 34, United States Code,
16 Section 40702, Mr. Garza shall cooperate with the collection
17 of a DNA sample as directed by a probation officer.

18 While on supervision, Mr. Garza shall abide by the
19 standard conditions as adopted by this Court, and with the
20 following special conditions:

21 Due to the nature of the instant offense and
22 substance abuse concerns, first, Mr. Garza shall submit his
23 person, residence, office, vehicles, papers, business, or
24 place of employment, and any property under his control to a
25 search. Such a search shall be conducted by a United States

1 probation officer at a reasonable time and in a reasonable
2 manner based upon a reasonable suspicious of contraband or
3 evidence of a violation of a condition of release. Failure
4 to submit to such a search may be grounds for revocation.
5 Mr. Garza shall warn any residents that his premises may be
6 subject to searches.

7 Mr. Garza shall submit to substance abuse testing
8 to determine if he has used a prohibited substance.

9 Mr. Garza shall participate in a substance abuse
10 treatment program and follow the rules and regulations of
11 that programs. The probation officer, in consultation with
12 the treatment provider, will supervise Mr. Garza's
13 participation in the program.

14 Mr. Longstreet, do you have any questions
15 concerning any aspect of the sentence imposed?

16 MR. LONGSTREET: I do not.

17 THE COURT: Do you have any objections procedural,
18 substantive or otherwise to any aspect of the sentence
19 imposed beyond the positions you've already made a part of
20 the record?

21 MR. LONGSTREET: None.

22 THE COURT: Mr. DePorre, do you have any questions
23 concerning any aspect of the sentence?

24 MR. DePORRE: No, Your Honor.

25 THE COURT: Do you have any objections?

1 MR. DePORRE: None.

2 THE COURT: Okay. Mr. Garza, in order to appeal
3 your conviction and sentence, you need to file a written
4 notice of appeal with the Clerk of This Court within 14 days.

5 THE DEFENDANT: Your Honor, can I put on the record
6 notice of appeal?

7 THE COURT: No, you need to file it in writing, but
8 I don't mind asking Mr. Longstreet to file on your behalf.

9 Mr. Longstreet, are you willing to do that?

10 MR. LONGSTREET: No.

11 THE COURT: You are not willing to file the notice
12 of appeal?

13 MR. DePORRE: I don't do appeals. I don't do
14 anything with appeals. I mean, I could file within 14 days,
15 but I typically don't do the appeals.

16 THE COURT: All right. Hold on one second.

17 (An off-the-record discussion was held at
18 3:58 p.m.)

19 THE COURT: Mr. Longstreet, how about if you file
20 it and then move to withdraw in the Sixth Circuit?

21 MR. LONGSTREET: I will do that.

22 THE COURT: You will do that. Okay. Just to be
23 clear, Mr. Longstreet, when I say 14 days from today, we are
24 going to get this judgment entered tomorrow, but you can't
25 file the notice of appeal until we enter the judgment because

1 the notice of appeal is from the judgment. So you will see
2 the judgment pop up on your computer as an e-file, we will
3 e-file the judgment, and at that point I'm asking you to file
4 the notice of appeal on Mr. Garza's behalf. Will you do
5 that, please?

6 MR. LONGSTREET: Okay.

7 THE COURT: Then will you send Mr. Garza a letter
8 confirming for him that you have filed the notice of appeal.

9 MR. LONGSTREET: I will do that.

10 THE COURT: Okay. We have our forfeiture language
11 in the judgment. I have a few other things to say but let me
12 make sure we get this in. The judgment will include the
13 following. Mr. Garza forfeits his interest in the following
14 property: Pursuant to Title 18, United States Code,
15 924(d)(1) together with 28 USC 2461(C): First, one black
16 Ruger EC9s nine-millimeter semi-automatic pistol, serial
17 number is obliterated; second, one round of nine-millimeter
18 ammunition; and third, six rounds of nine-millimeter
19 ammunition.

20 The preliminary order of forfeiture which is Docket
21 No. 58 is hereby incorporated by reference. Any objection to
22 that, Mr. Longstreet?

23 MR. LONGSTREET: No.

24 THE COURT: Mr. DePorre?

25 MR. DePORRE: No, Your Honor. Thank you.

1 THE COURT: Mr. Longstreet, do you want to make any
2 request in terms of recommendations that I would make to the
3 Bureau of Prisons concerning Mr. Garza confinement?

4 MR. LONGSTREET: He's requesting to go to Oxford,
5 Minnesota.

6 THE COURT: Mr. Garza, is that a federal prison
7 there, do you know?

8 THE DEFENDANT: Yeah, Wisconsin -- my bad,
9 Wisconsin.

10 THE COURT: Oxford, Wisconsin is what you want me
11 to recommend?

12 THE DEFENDANT: Wouldn't I be going to a medium or
13 low, depends --

14 THE COURT: I have no idea.

15 MR. LONGSTREET: The Bureau of Prisons makes that
16 decision.

17 THE COURT: But the way it works, Mr. Garza, is I
18 can make a recommendation to them, they don't have to follow
19 it, but I can recommend that they house you in a certain
20 facility. I don't mind doing that if you would like me to do
21 that.

22 THE DEFENDANT: Fort Dix or Oxford, Wisconsin.

23 THE COURT: Where is Fort Dix?

24 THE DEFENDANT: I don't know where Fort Dix is.

25 THE COURT: We will figure it out, but you want me

1 to put in the judgment that I recommend incarceration either
2 at Fort Dix or Oxford, Wisconsin?

3 THE DEFENDANT: Yes.

4 THE COURT: I will do that.

5 Holly, anything else on your end?

6 THE CASE MANAGER: Not on my end.

7 THE COURT: Mr. Garza, let me share a couple last
8 thoughts with you. I think you heard me say that when you
9 get out of your term of custody you will be on supervised
10 release. And you've been on parole before, but I want to
11 stress to you that supervised release here is different. Our
12 probation officers who supervise folks on supervised release
13 are really trying to help them. They are trying to help them
14 connect them with resources to help them succeed in the
15 community. So when you get out from serving this time, I
16 hope that you see your probation officer as a teammate and a
17 supporter who can connect with you the resources you need to
18 live the life that you want to lead doing welding or whatever
19 skills you developed in the Bureau of Prisons.

20 Mr. Garza, do you have any questions or concerns
21 about anything that happened today that you want to share
22 with me before we adjourn?

23 THE DEFENDANT: No.

24 THE COURT: Okay. Anything else, Mr. Longstreet?

25 MR. LONGSTREET: No.

1 THE COURT: Mr. Longstreet, we will look for the
2 notice of appeal shortly after we get the judgment entered.
3 Thank you for that.

4 Mr. DePorre, anything else from the government?

5 MR. DePORRE: No, Your Honor. Thank you.

6 THE COURT: Okay. Thank you. We are adjourned.

7 THE CASE MANAGER: All rise. Court is in recess.

8 (Proceedings concluded at 4:02 p.m.)

9

10 C E R T I F I C A T I O N

11 I, Robert L. Smith, Official Court Reporter of the
12 United States District Court, Eastern District of Michigan,
13 appointed pursuant to the provisions of Title 28, United
14 States Code, Section 753, do hereby certify that the
15 foregoing pages comprise a full, true and correct transcript
16 taken in the matter of UNITED STATES OF AMERICA vs. NOE
17 GARZA, Case No. 21-20405, on Monday, March 27, 2023.

15

16 s/Robert L. Smith
17 Robert L. Smith, RPR, CSR 5098
18 Federal Official Court Reporter
19 United States District Court
20 Eastern District of Michigan

19 Date: 07/22/2023
20 Detroit, Michigan

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